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ABSTRACT

In this statement the Commission criticizes the President's distinction between de jure and de facto racial segregation, pointing out that many present situations of de facto segregation are the result of previous legal action, such as decisions on school boundary lines, racial zoning ordinances and judicial enforcement of racially restrictive covenants. The Commission also states its opposition to a return to litigation as a means of enforcing desegregation rather than administrative enforcement through Title VI of the Civil Rights Act of 1964. It emphasizes the traditional role of the school as a socializing force and takes exception to the President's comment that it is asking too much of the school to play this role. The Commission also discusses the ideas of busing and "neighborhood schools," noting that the important factor is the quality of the education that children receive, and not where they are educated or how they get there. In its conclusion the Commission emphasizes the need for strong national leadership in encouraging maximum efforts toward desegregation. (RT)

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STATEMENT OF THE

UNITED STATES COMMISSION ON CIVIL RIGHTS

concerning the

"STATEMENT BY THE PRESIDENT

ON ELEMENTARY AND SECONDARY SCHOOL DESEGREGATION"

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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STATEMENT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS
CONCERNING THE "STATEMENT BY THE PRESIDENT
ON ELEMENTARY AND SECONDARY SCHOOL DESEGREGATION"

On March 24, 1970, the President issued an important civil rights statement. The President's statement is comprehensive and thoughtful. He has made clear his strong support for the constitutional principle of the 1954 Supreme Court decision in Brown v. Board of Education: "We are not backing away. The constitutional mandate will be enforced."

The President also has given his view of the contents of that constitutional mandate. "Deliberate racial segregation of pupils by official action," the President said, "is unlawful, wherever it exists." He pointed out emphatically that "it must be eliminated 'root and branch'--and it must be eliminated at once." Further, the President stated that "segregation of teachers must be eliminated" and ordered that steps be taken to assure against discrimination in the quality of facilities or the quality of education delivered to school children within individual school districts.

As the President recognizes, however, the issues are more complex than merely ending current practices of deliberate public school segregation and discrimination, and their implications for the future of the country are far-reaching. While many of the problems are common to nearly all minority groups in all parts of the country, others frequently are unique to particular sections of the country or to particular minority groups. Problems of segregation and inadequate school facilities, for example, cut across racial or ethnic lines and exist in all regions. Black children in the rural South, however, experience educational deprivations different in kind from those of children who live in northern ghettos. By the same token, Mexican American and other Spanish-speaking children experience unique hardships when they come from homes where their first language is Spanish but enter an educational environment where only English is permitted, and as a result are shunted automatically into lower ability groups and subjected to curricular discrimination.

The President addressed himself to many of the more complex issues that have been troubling the Nation--issues such as what can be done about so-called de facto school segregation, what are the most effective and sensible means of enforcing school desegregation requirements, how much of a social burden can the schools reasonably be expected to bear, how important is integration to

the achievement of minority group children, how effective can busing be as a means of carrying out school desegregation, how important is adherence to the neighborhood school principle, and what kinds of resources should the Federal Government make available to local communities to achieve the goal of equal educational opportunity?

These are issues of critical importance deserving of the highest level of consideration and discussion. In the course of its history, the Commission has paid continuing attention to many of these issues. We are committed to the purpose for which this Commission was created: To act as an objective, bipartisan factfinding agency and to continually apprise the President, the Congress, and the Nation of the facts as we see them. The Commission believes that the experience and information we have gathered over the years concerning the issues discussed in the President's statement provide a sound basis for analysis and comment that can contribute to their clarification and be of help to educators, other public officials, and concerned Americans generally. It is in this spirit that we speak out now.

De Jure v. De Facto

The President draws a sharp distinction between de jure and de facto school desegregation, contending that under the former there is a positive duty to end it, while under the latter, "school authorities are not Constitutionally required to take any positive steps to correct the imbalance." This statement represents a strict interpretation of existing Supreme Court decisions.

It can be argued, however, that the Supreme Court's decision in Brown warrants a broader interpretation. For one thing while the holding of the Supreme Court in the Brown case was limited to legally compelled or sanctioned segregation, the Court's concern extended as well to segregation resulting from factors other than legal compulsion. The Supreme Court quoted with approval a lower court finding that "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law. . ." (Emphasis added), and concluded: "Separate educational facilities are inherently unequal. . ."

Thus the Court expressly recognized the inherent inequality of all segregation noting only that the sanction of law gave it greater impact. In a sense, therefore, the President's sharp distinction between de jure and de facto segregation tends to blunt what many think is a crucial thrust of Brown.

The Commission, moreover, in the course of its investigations, has found numerous examples--North and South--which suggest that it is not adequate to describe school segregation as purely de facto--that in many cases, school segregation that appears to result solely from accidental housing patterns turns out, upon closer examination, to result in large part from decisions by school and other public officials.

For example, decisions on school boundary lines have been made with the purpose and effect of isolating minority group members in their own separate and unequal schools. Sites for new schools, even recently, have been strategically selected so as to assure against racially integrated student bodies. The size of schools has been determined with an eye toward maintaining racial separation. As the President recognizes, conduct of this type is illegal, instances of purposeful school segregation have been found in surprising places, in the North as well as the South. The school systems of New Rochelle, New York; South Holland, Ilinnois; Pasadena and Los Angeles, California; and Pontiac, Michigan, are among those which have been found by the courts to have practiced deliberate school segregation in violation of the Fourteenth Amendment. There is no doubt that there are many more instances of school segregation resulting from conscious decisions of school officials than the relative handful that have come to the attention of the courts.

It also should be understood that legally compelled or sanctioned school segregation is not a phenomenon unique to the South. In many northern and western states, the current pattern of racial separation of students is a legacy of an era when laws and policies explicitly authorized segregation by race. States such as Indiana, New Mexico and Wyoming maintained separate-but-equal laws beyond the mid 1940s. In other northern states, such as Ohio and New Jersey, cities and counties persisted in maintaining separate schools for black students well into the 1950s.

Even in those instances where school segregation is a result of housing patterns with no apparent complicity of school officials, government at all levels--local, State, or Federal--invariably is heavily implicated. Historically, racial zoning ordinances imposed by local law were a formidable factor in creating and maintaining racially exclusive neighborhoods. Although such ordinances were held unconstitutional as early as 1917, some communities continued to enforce them, even as late as the 1950s.

Judicial enforcement by State courts of racially restrictive covenants has been another important factor. Although these covenants were private agreements to exclude members of designated minority groups, the fact that they were enforceable by the courts gave them maximum effectiveness. Not until 1948 was the judicial enforcement of such covenants held unconstitutional, and not until 1953 was their enforcement by way of money damages held unlawful. Racially restrictive covenants no longer are judicially enforceable, but they still appear in deeds and the residential patterns they helped to create still persists.

Various exercises of local governmental authority, such as decisions on building permits, the location of sewer and water facilities, building inspection standards, zoning and land use requirements, and the power of eminent domain have been used to exclude minority group members from designated neighborhoods and even from entire communities.

The Federal Government, principally through its public housing and FHA mortgage insurance programs, has been all too often a willing partner in the creation and perpetuation of racially segregated neighborhoods, even to the point of insisting upon them. Until the late 1940s, for example, FHA insisted on racially restrictive covenants to insure against integrated housing developments. Until 1962 when the Executive Order on Equal Opportunity in Housing was issued, the agency continued willingly to do business with discriminatory builders and developers. The Public Housing Administration permitted its funds to be used for the creation and perpetuation of segregated housing projects well after the courts had made it clear that such practices were in violation of the Constitution. Other Federal programs, such as the highway and urban renewal programs, which involve massive displacement and relocation, also have had the effect of intensifying residential segregation.

The point we are making is that the current situation we face, in which most minority group children attend school in isolation from children of the majority group, is not accidental or purely de facto. In many cases, it has resulted in whole or in substantial part from an accumulation of governmental actions. Thus the categorical distinction between de jure and de facto segregation is not as clear-cut as it would appear. Upon closer examination, there is probably little legal substance to the concept of de facto school segregation. Further, in the Commission's view, the Government has a moral as well as legal responsibility to undo the segregation it has helped to create and maintain. There is no statute of limitations by which government in its many

forms can be exonerated from its past misdeeds or relieved of its current obligations.

The Commission believes that the necessary course of action is to make available to the Department of Justice and the Department of Health, Education, and Welfare the resources necessary to determine on a nationwide basis those cases which appear on the surface to involve de facto segregation but which in reality involve de jure school segregation, and then to take steps to correct the situation. We note that the President, in his budget request for Fiscal Year 1971, has asked for substantial increases in resources for civil rights enforcement in both departments--56 additional positions for the Civil Rights Division of the Department of Justice and 144 additional positions for the Office for Civil Rights in the Department of Health, Education, and Welfare. It is important that the President's request be honored. It also is important that the attention of these two departments be directed specifically to the problem of apparent de facto segregation that may, in fact, have been consciously created and maintained de jure. We believe that to accept without investigation the notion of widespread fortuitous and ingenuous school segregation and to determine policy on that basis would be a serious mistake.

Further, there is a large arsenal of weapons, in the form of nondiscrimination laws and low- and moderate-income housing programs, available to combat housing segregation and remove it as a cause of school segregation. As this Commission also recently pointed out in its report on "Federal Installations and Equal Housing Opportunity," the leverage of the substantial economic benefits generated by Federal installations can be used effectively to promote housing desegregation.

Another important way to promote housing desegregation is to provide people with the economic wherewithal necessary to expand their choice of housing. The President's Family Assistance and Manpower Training proposals, as well as the Administration's endorsement of the "Philadelphia Plan," represent forward moving efforts to enable the poor, a disproportionately high number of whom are minority group members, to join the Nation's economic mainstream and expand their choice in housing and other aspects of life through adequate income and job stability.

Enforcement of School Desegregation

The President's statement was largely silent concerning the

means that will be used to bring about an end to dual school systems. Experience in the 16 years since the Brown decision provides many lessons on what kind of enforcement works and what kind does not. During the first ten years following Brown, when litigation was the sole enforcement mechanism, progress in carrying out the Supreme Court's mandate was frustratingly slow--three percent desegregation in 10 years. Since the enactment of Title VI of the Civil Rights Act of 1964, however, with its provision for administrative enforcement, progress has accelerated enormously--30 to 40 percent desegregation in the last five years. In a July 3, 1969, statement the Attorney General and the Secretary of Health, Education, and Welfare indicated that the Government was deemphasizing the use of administrative enforcement under Title VI in favor of a return to litigation. This, despite the evidence of the practical utility of Title VI as an enforcement mechanism. The fact that the President made no reference to the means to be used raises the fear that litigation will, in fact, continue to be substituted for administrative enforcement. In its September 1969 report on "Federal Enforcement of School Desegregation," the Commission characterized the Administration's reliance on litigation as "a major retreat in the struggle to achieve meaningful school desegregation." The Commission believes it is important that a clear statement of policy be made by the President to allay these fears.

The President made plain in his statement, however, two other principles which apparently will guide his Administration in carrying out the Supreme Court's mandate: local discretion and reliance on good faith of local school administrators. Again, on the basis of the experience of the past 16 years, the Commission believes that neither is adequate assurance. The progress that has been made in promoting school desegregation in the South has not often resulted from local initiative, alone, but more frequently from persistent Federal pressure, joined with local initiative. Experience also has demonstrated that results alone--and not good faith--are the only true measure of compliance with the Supreme Court's mandate.

Burden on the Schools

Another area that warrants further discussion is the suggestion that we are asking too much of our schools. The President said: "They have been expected not only to educate, but also to accomplish a social transformation." The Commission believes this is true--that much is being asked of our schools, that much always has been asked of them. The important point, however, is that they

have delivered. During the great waves of immigration that brought millions of oppressed people to this land of promise, it was the schools that we relied upon to educate the children of these immigrant familites and to integrate them into American society. They did not fail us then.

But they are failing today. The children of the Nation's ghettos and barrios are not receiving the quality of education afforded to more affluent majority group children, nor are they being enabled to join the Nation's social and economic mainstream. Above all, they are not being integrated into American society, but are becoming alienated from it. To be sure, the problems facing the schools may be more difficult than those they faced in earlier days when they succeeded so well. But these problems cannot be viewed as insoluble, nor can we relieve our schools of the burden, heavy as it may be, of being the chief instrument by which they will be resolved. For the schools occupy a special place in American society. As the President pointed out:

> "The school stands in a unique relationship to the community, to the family, and to the individual student. It is a focal point of community life. It has a powerful impact on the future of all who attend. It is a place not only of learning, but also of living--where a child's friendships center, where he learns to measure himself against others, to share, to compete, to cooperate--and it is the one institution above all others with which the parent shares his child."

Public schools must again be asked to play their traditional role as "the balance wheel of the social machinery." It will not do to insist that we are placing too heavy a burden on the schools. It is a burden that they always have accepted and they must accept it now. It should be a national priority of the highest order to provide our schools with the necessary resources--adequate facilities, better teacher training, and the like--to bear this burden. It is for this reason that we welcome the President's allocation of one and a half billion dollars. There are urgent needs for all of this and more, plus a clear pinpointing of the precise educational priorities for school improvement throughout the country.

There simply is no other institution in the country so equipped to do the job. If the public schools fail, the social, economic, and racial divisions that now exist will grow even wider. It would be even worse, however, if the schools do not even try.

Importance of School Integration

In his March 3, 1970, message on "Education Reform," the President made the following statement: "Quality is what education is all about; desegregation is vital to that quality." That statement did not represent a suggestion of a new direction in national policy, but rather, an accurate and succinct description of one of the cornerstones of established policy.

It has been settled that desegregation is fundamental to the achievement of equal educational opportunity. All three branches of the Federal Government have spoken with one firm resolve on this matter and the Nation has committed itself to achieving the goal of quality integrated education for all of our children. Studies have been made, such as the Coleman Report, the Commission's own report on "Racial isolation in the Public Schools," and a recent study of the New York State Board of Regents, which indicate that racial, as well as social class, integration has a positive effect on the achievement of school children. These studies are useful in contributing to better understanding of the elements that make for quality education. They in no way question the fundamental policy of school desegregation. That policy is based on considerations as important as school achievement scores. School integration is necessary to create the understanding and sense of common purpose so vital to the Nation's future well-being. The key question now is not the relative merits of desegregation, but how to accomplish it.

It is true, as the President points out, that the adult community has failed to achieve for itself the kind of multiracial society that we are seeking to achieve in schools.- The failure of the adult community, however, only highlights the necessity of insuring that our children receive the kind of training in integrated school environments that will equip them to thrive in the multi-racial society they will enter. In fact, nowhere is integration more easily achieved than among children, who are born without prejudice and who accept other human beings for their human values, without automatic judgments based on race or color. If we delay this training until they enter the adult society, we will have been too late. It is in the schools where our children's attitudes and perceptions can be influenced to enable them to succeed where we, their parents, have failed.

Busing

In his statement, the President raised the issue of busing and cautioned that we must proceed with the least possible disruption

to our children's education. Busing has become an emotionally charged word and the issues involved have been the subject of considerable misunderstanding. Many who oppose busing do so on the basis of certain assumptions, one of which is that riding to school disrupts a child's education and causes harm. This is a serious issue which should not be argued solely in terms of assumptions or emotion. The Commission believes that facts which it has found in the course of its investigations may contribute to clarifying the issue and sharpening the debate over it.

Busing is neither a new nor a unique technique, and its use is not limited to facilitating desegregation. For example, for decades, black and white children, alike, in the South were bused as much as 50 miles or more each day to assure perfect racial segregation. In many cases, busing was the exclusive privilege of white children--black children often were required to walk considerable distances. No complaints then were heard from whites of any harmful effects. Nor was any concern exhibited over the damage suffered by black children through their deliberate segregation. The Supreme Court in Brown described vividly the nature of the harm to which Negro children were being subjected.

> "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Thus the arguments that some now make about the evils of busing would appear less than ingenuous. The plain fact is that every day of every school year 18 million pupils--40 percent of the Nation's public school children--are bused to and from school, and the buses log in the aggregate more than two billion miles--nine billion passenger miles--each year. It also should be understood that the overwhelming majority of school busing has nothing to do with desegregation or achieving racial balance. The trend toward consolidation of schools, for example, particularly in rural areas, requires extensive busing. It causes no disruption to the educational routines of the children and is treated as normal and sensible.

Amid the controversy over busing, in many school systems, North and South, transportation is being used quietly and effectively as a means of bringing about desegregation. The bus rides are not

long--in Berkeley, California, for example, a city of 120,000 people, the bus trip never exceeds 20 minutes--and it causes no harm. In the South, of course, the amount of busing needed to bring about desegregation frequently is considerably less than was required to maintain dual school systems. For example, at the Commission's 1968 hearing in Montgomery, Alabama, we found that black students in Selma, seeking to attend trade school, were bused some 50 miles to the nearly all-black Trenholm School in Montgomery, although the Rufus King trade school was located in Selma. Rufus King, however, was all-white.

It is a mistake to think of the problems of desegregation and the extent that busing is required to facilitate it solely in the context of the Nation's relatively few giant urban centers such as Chicago, New York, or Los Angeles. In most of our cities the techniques necessary to accomplish desegregation are relatively simple and busing creates no hardships. The experience in communities which have successfully desegregated could easily be transferred to cities of greater size.

Even in giant urban centers, progress in desegregation does not require interminable bus rides or disruption of our children's education. The President, in discussing the recent California court decision requiring desegregation of the Los Angeles school system, quoted "local leaders" as estimating that the total cost of busing will amount to 40-million dollars over the next school year. This estimate represented the contention of the defendants in that litigation. It was presented to the court for the purpose of arguing against the feasibility of desegregation in that city's school system. In fact, the court rejected this estimate as unrealistic.

In Los Angeles, as in other cities, substantial desegregation can be accomplished through relatively simple devices such as alteration of existing school attendance areas, school pairing, and the establishment of central schools. To be sure, transportation is necessary in giant urban centers as it is in smaller cities, but here too, it is false and defeatist to assume that the bus rides must be lengthy or that the education of our children will be disrupted.

In the Commission's view, the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus ride that is really important.

Neighborhood Schools

In his statement, the President emphasized the desirability of maintaining the neighborhood school principle. For several reasons, the Commission questions whether this should be one of the cornerstones upon which national educational policy rests.

For one thing, neighborhood schools do not represent the invariable principle governing school attendance that many believe. Frequently, neighborhood attendance is subordinated to other educational goals, In some cities, for example, handicapped children or academically talented students attend schools other than the one in their neighborhood.

Further, the Commission has found numerous instances of departures from neighborhood attendance policy that have had the effect of promoting racial segregation, where faithful adherence to the neighborhood school principle would have assured integrated student bodies. In Cleveland, Ohio and San Francisco, California, for example, optional zones were created to permit white students who otherwise would have attended racially integrated schools to choose instead nearly all-white schools out of their neighborhood. Transfer plans, ostensibly instituted to relieve overcrowding, also have had the effect of promoting racial separation.

There is, in fact, a good deal of inconsistency and hypocrisy that all too often surround the lip service paid to the neighborhood school principle. Courts, as well as school officials, have had little difficulty in dismissing its importance for the purpose of maintaining segregation. In Cincinnati in 1876, for example, black children who had to walk four miles each way to attend a black school brought suit to enter the much nearer white school. The court refused and said: "Children cannot cluster around their schools like they do around their parish church." Several years ago, then Chief Judge Tuttle of the U.S. Court of Appeals for the Fifth Circuit, in a case involving the Mobile, Alabama, school system, made some observations on this point:

> "Both in testimony and in the briefs, much is said by the appellees about the virtues of 'neighborhood schools.' Of course, in the brief of the Board of Education, the word 'neighborhood' doesn't mean what it usually means. When spoken of as a means to require Negro children to continue to attend a Negro school in the vicinity of their homes, it is spoken of as a 'neighborhood' school plan. When the plan permits

> a white child to leave his Negro 'neighborhood' to attend a white school in another 'neighborhood' it becomes apparent that the 'neighborhood' is something else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white people. So far as has come to the attention of this court, no board of education has yet suggested that every child be required to attend his 'neighborhood school' if the 'neighborhood school' is a Negro school. Every Board of Education has claimed the rights to assign every white child to a school other than the neighborhood school under such circumstances. And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the 'inherently unequal' education of 'separate educational facilities,' the answer too often is that the children should attend their 'neighborhood school.' So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors, such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose 'area' school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening 'areas' away."

There also is some question whether the narrow attendance areas served by neighborhood schools truly represent the 'neighborhood' as we currently understand that term. In fact, the meaning of neighborhoods has changed over the years. Recent developments in the pattern of urban life--rapid population shifts and the growing distances city residents travel for recreation, business, and shopping--have diffused traditional neighborhood patterns. They no longer are the self-contained, cohesive communities they may once have been. In short, it is doubtful that adherence to the neighborhood school principle is required by considerations of close community ties in narrow geographical areas. The schools have an opportunity, by broadening the geographical areas they serve, to expand the experience of children beyond that of the restricted confines of their narrowly defined neighborhood, and establish the school as a broader "community" or "neighborhood" in which the lives of all who attend can be enriched.

If adherence to the neighborhood school principle frequently interferes with efforts to promote desegregation, there also is some question concerning its value as a means of providing quality

education. The essence of the neighborhood school is a self-contained unit serving a relatively small student population. In larger units, however, economies of scale frequently make possible the offering of a broader curriculum and the provision of new and expensive equipment that are not economically possible in schools which serve small numbers of students. Many rural areas, for example, in an effort to improve the quality of education, have abandoned the tradition of small individual school houses in favor of consolidated schools serving much larger student bodies. In short, adherence to the neighborhood school principle under current conditions not only tends to interfere with efforts at desegregation, but also has little bearing on efforts to improve the quality of education and in some cases may even thwart those efforts.

The Commission believes that ideally and ultimately, resolution of the problem of school segregation lies in residential desegregation, which will remove the emotional issue of neighborhood schools from the arena of civil rights controversy. Residential desegregation can be accomplished through laws and policies designed specifically to secure an open housing market, and administered with dedication and purpose. This does not mean, however, that efforts to desegregate the schools should await the day when neighborhood desegregation has been achieved. We cannot afford to make integrated education wholly dependent upon open housing, for to do so would be to consign at least another generation of children to education in racially isolated schools.

Helping Communities to Desegregate

We have spoken of communities that have recognized the problem of school segregation and have determined to eliminate it on their own. Many of these are in the South and they have complied with judicial and administrative requirements by devising imaginative and successful plans not only for achieving physical desegregation but also for assuring quality education for all children. Some of these communities are in areas commonly thought to be among the most opposed to desegregation. For example, Pass Christian and New Albany, Mississippi, both have accomplished full desegregation and have taken steps to assure that the desegregated schools are not white schools or black schools, but schools that all children can feel a part of. As measured by white and black student participation in school activities, daily attendance rates, and achievement scores, their efforts have been successful.

Other communities, particularly in the North, while they have been under no legal compulsion to accomplish desegregation, nonetheless have sought to do the job. The President has pointed out that these school officials are free to take steps beyond the constitutional minimums to diminish racial separation.

The Commission questions, however, whether this is enough, and whether the appropriate posture of the Federal Government on this important matter should be merely a passive one. Rather, we believe it is essential that resources, in the form of financial and technical assistance, be made available to assist these communities in bringing about total and successful desegregation as rapidly as possible.

We recognize, of course, that the President has made a commitment of one and one-half billion dollars over the next two years to carry out his school policies, and we applaud this step. There is need to clarify how this money will be used. The President specified two purposes: "Improving education in racially impacted areas, North and South, and for assisting school districts in meeting special problems incident to court-ordered desegregation."

It is not clear whether these two purposes are considered mutually exclusive--whether school districts <u>not</u> under court order would be eligible for assistance under this program to promote desegregation or whether the President's proposal assumes that so-called <u>de facto</u> segregation is with us to stay. If the latter, then the proposal may well have the effect of providing built-in financial incentives for the perpetuation of racial segregation in schools not under court order and transform an acceptance of the reality of <u>de facto</u> segregation into self-fulfilling prophesy. We believe again that further official clarification of this point is needed.

The President has made it clear to all that his Administration intends to carry out the Supreme Court's mandate of an immediate end to legally sanctioned dual school systems.

Much more, however, is necessary. The problems of racial isolation in the Nation's schools cannot be resolved solely through cautious adherence to a narrow construction of existing case law. The courts, in defining the constitutional requirements relating

to desegregation have informed us only of our minimum mandate, not the maximum that we are permitted to do to accomplish school desegregation. In education, as in other areas of national concern, it is the responsibility of the Congress and the Executive Branch to act beyond this minimum, using the broad authority provided under the Constitution. Thus it is not sufficient to say that local school officials who have not maintained legally compelled separate systems may desegregate their schools if they choose to. The necessity of desegregation must also be urged and the resources made available to accomplish it if our Nation is to move toward the idealof "one Nation, under God, indivisible, with liberty and justice for all." It is the word "all," with its special connotation of equal educational opportunity for all the children in America which has inspired most of our comments. We believe that here is the central concern, the true promise of what America will be in the years ahead--one Nation, indivisible, or two Nations divided.

The Commission fears that the President's statement, particularly his sharp distinction between de jure and de facto segregation, well may have the net effect, though unintentional, of signaling a major departure from the policy of moving toward integrated schools and that open society of which he spoke so well in his statement.

Last September, in its report on "Federal Enforcement of School Desegregation," the Commission pointed out

> "This is certainly no time for giving aid and comfort, even unintentionally, to the laggards while penalizing those who have made commendable efforts to follow the law, even while disagreeing with it. If anything, this is the time to say that time is running out on us as a Nation. In a word, what we need most at this juncture of our history is a great positive statement regarding this central and crucial national problem where once and for all our actions clearly would match the promises of our Constitution and Bill of Rights."

The Commission is aware that the problem of school segregation is one of enormous difficulty and complexity. Yet a realistic assessment of the scope and dimensions of the problem should not result in a resigned acceptance of its indefinite continuation or a defeatist conclusion that it is beyond our capacity to resolve. The

Commission is convinced of the ability and will of the American people to respond affirmatively to a call to end the injustice that school segregation represents. This call requires a major investment of resources, the commitment of public and private officials on the Federal, State, and local level--indeed of all Americans--and above all, the continuing example of courageous moral leadership from the President of the United States.

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